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To: Microsoft ATR
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Subject: Microsoft Settlement

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Re: Proposed Microsoft Settlement

I am a CPA employed by a large computer software company, and I would like to add my two cents to the proposed settlement between the DOJ and Microsoft. First of all, I agree with most of the third party analyses, which came out when the proposed settlement was announced. Most analysts thought that the settlement was highly favorable to Microsoft. I agree with their assessment, and share their puzzlement about why Microsoft deserved a favorable settlement.

I could understand giving a favorable settlement to a company that admitted guilt, was a first time offender, and had agreed to change it's ways, but none of those descriptions apply to Microsoft. This is their second time in front of the courts on this issue, having apparently learned nothing from their first brush with the law in 1995. The weak settlement from the first case was directly responsible for the second court case. I am afraid that if the settlement goes through as proposed, there will inevitably follow (if the DOJ doesn't completely play dead) a third case.

History and this court case have shown that when it comes to competing in the marketplace, Microsoft is not a company that is greatly troubled about ethics and morals. For example, this fall while their case was on appeal, Microsoft blocked users of a competing Internet browser from accessing the MSN community of websites. Microsoft claimed that the competing browser did not correctly implement some of the Internet standards. Only when it was demonstrated that Microsoft's browser also did not correctly implement the same standards, and that the browser from Opera was more compatible with the standards than Microsoft's did they relent and allow the competing browser to be used. The transparency of some of Microsoft's explanations can leave even the most ardent of Microsoft supporters speechless with embarrassment.

Microsoft continues to insist that they are innocent even after losing 8-0 at the Appeals court. Innovation is a word that Microsoft has been hiding behind for quite some time. Microsoft persists in believing that it can take any anticompetitive action it wants as long as they call it "innovation".

Is an unrepentant, two time offender the kind of company that should get a favorable settlement? The history of this case, and common sense argue quite forcefully that the answer is no. The

DOJ has not provided a convincing 'in the public interest argument' for their weak settlement. In order to learn to be a good corporate citizen, Microsoft needs a punishment that it cannot rationalize away. Unrepentant companies like Microsoft need a strong punishment that will convince them of their guilt, and that will deter future illegal acts.

Punishment

That leads to one of the biggest arguments against the proposed settlement. There is absolutely not punishment in it. Basically, under the terms of the proposed settlement, all Microsoft has to do is to behave legally and ethically, like they should have been doing from the very beginning, for a period of several years and all will be forgiven and forgotten. There is no punishment, not even a small fine for a company that is sitting on 30 billion in cash and cash equivalents.

This also means that Microsoft gets to keep the market position it gained from its illegal behavior. Who would propose a policy that let robbers keep the goods they stole as long as they behaved in the future? Yet, that is exactly what this settlement proposes to do.

APIs and Interfaces

One very specific part of the settlement of the settlement that needs to change are the provisions that call for Microsoft to publish their interfaces and to cooperate with all companies who want their software to run on or in cooperation with their software. Specifically, the settlement says that Microsoft and Microsoft alone get to determine what is, or is not a business. But Microsoft's greatest single threat on the operating system front comes from Linux -- a non-commercial product -- and it faces a growing threat on the applications front from Open Source and freeware applications.

Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "... (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business". Not only does Microsoft get to specifically exclude its biggest competition, it is the judge and jury in deciding what constitutes a business. This part of the agreement needs to be re-written so that all APIs and interfaces that are necessary to interoperate with Microsoft software are open to everyone, regardless of their status.

Java

The states opposing the settlement have a very good idea when they want Microsoft to include the Java computer language as a standard part of it's operating system. Java is a powerful force for competition in the computing world because it is platform neutral. That means that a program written in Java can run on any operating system. By forcing Microsoft to include Java, that will encourage programmers to write Java programs which means they will automatically be writing programs for competing operating systems at the same time. Having more programs available for competing operating systems, makes the competing operating system attractive to end users. Microsoft knows that Java has the affect of making the specific operating system less important.

That is why they dropped it from their latest version of Windows even though it costs Microsoft nothing and would make the computing experience for their customers better. To foster competition, the final settlement should force Microsoft to include Java with their operating system for a reasonable period of time.

The settlement as it is proposed does not protect the public interest. The court should not rubber stamp a weak settlement for the sake of disposing of the case. The software development portion of the U.S. economy is too important to let wrongs go uncorrected. The American consumers deserve an active and competitive computer software marketplace, and the Microsoft competitors who have played by the rules and been damaged by Microsoft's actions deserve relief and justice.

Regards,

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